C.S. 1002 (13)

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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

**CHHATTISGARH**

**WRIT PETITION NO. 2084 OF 2004**

PETITIONER :

P. R. No. 2161/04
Presented by Shri Sameer Behar
Dated ..... 21-7-04

**Ku Sweta Singh** , D/O. Shri Rajesh Kumar Singh , Aged about 21 years, R/O. Bilaspur , District Bilaspur (C.G.).

Versus

RESPONDENT :

1. **Chhattisgarh Public Service Commission** , through its **Secretary** , Raipur, District : Raipur, ( Chhattisgarh ) .

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA**

(21)

# HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

## Writ Petition No.2084 of 2004

Ku. Shweta Singh

- Versus -

Chhattisgarh Public Service Commission

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POST FOR ORDER ON 24th AUGUST, 2004

Sd/-
L.C. Bhadoo
Judge

**HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH**

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Chhattisgarh Public Service Commission

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Present: -

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| Mr. V.R. Tiwari, | Advocate: | For the petitioner. |
| Mr. Y.C. Sharma | Advocate: | For respondent. |

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## ORDER

(Passed on 24th August, 2004)

**L.C. BHADOO, J.**

By this writ petition filed under Articles 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the decision of respondent Chhattisgarh Public Service Commission whereby her request to accept her mark sheet passing graduation examination and to allow her to appear in the Civil Services Main Examination, which was scheduled to commence on 26-7-2004, was rejected. On filing of this petition, the petitioner was allowed to appear in the main examination vide interim order dated 23rd July 2004.

(2) Brief facts leading to filing of this writ petition are that respondent Chhattisgarh Public Service Commission issued an advertisement dated 9-7-2003 published in 'Rojgar Aur Niyojan' inviting applications from the candidates who desirous to appear in the Civil Services Examination 2003 for the various posts. As per the scheme of the examination, the examination was consisting of two successive stages (i) (a) Preliminary Examination (Objective Type) for the selection of candidates for the Main Examination and (b) Main Examination (Written and Interview) for the final selection of candidates for the various services and posts mentioned in the said advertisement. Sub-clause (b) of Rule 5 of said advertisement prescribes minimum educational qualification. As per this sub-clause a candidate was required to hold a degree of any of the Universities incorporated by an Act of the Central or State Legislature in India and further as per the note appended to that sub-clause even such candidates

were eligible to appear in the examination who had appeared at an examination the passing of which would render them educationally qualified for the Commission's examination, but were not informed of the results, even the candidates intending to appear at such a qualifying examination were eligible for admission to the Preliminary Examination. However, the candidates declared qualified by the Commission for taking the State Services (Main) Examination were required to produce proof of passing the requisite examination with their application for the Main Examination.

(3) The petitioner appeared in the B.A. final examination which was qualifying examination to appear in the said Civil Services examination. She also applied for the Civil Services examination in pursuance of the said advertisement. She was successful in the Preliminary Examination and became eligible to appear in the main examination. The Commission declared the result of the Preliminary Examination on 2-4-2004 and invited applications for the main examination up to 5-5-2004. However, the same was extended up to 15-6-2004 vide Annexure-P/1, but by that time the result of B.A. examination in which the petitioner appeared could not be declared. The petitioner within the stipulated time filled the form for main examination and submitted in the respondent's office. Respondent fixed the schedule for the main examination commencing from 26th July 2004. The result of B.A. Final examination of the petitioner was delayed on account of the Parliament Elections, but somehow the result of B.A. Final examination of the petitioner was declared on 13-7-2004 in which she was declared successful. She secured 59.78% aggregate marks in that examination. After obtaining the copy of mark sheet on 16-7-2004, on the same day she approached one of the members of the respondent Commission. On 20th July 2004, she made a prayer before the Chairman of respondent Commission, but her request was turned down on the ground that she could not file the mark sheet of the graduation examination along with the application for the Civil Services Main examination within the prescribed time.

(4) The further case of the petitioner is that filing of proof of B.A. examination i.e. mark sheet with the application for main examination was not a mandatory condition as per the advertisement, therefore, the action of respondent was arbitrary and illegal, as the petitioner could not submit mark sheet due to unavoidable circumstances and which were not within the control of the petitioner. As soon as the result was declared before the commencement of main examination, the petitioner approached the Commission with mark sheet of qualifying examination, therefore, the petitioner has requested for issuance of

writ of mandamus for allowing her to appear in the examination and for passing any appropriate order.

(5) Return has been filed on behalf of respondent in which it has been mentioned that as per the advertisement all candidates who were declared qualified by the Commission for taking the State Services (Main) Examination were required to produce proof of passing the requisite examination with their application for main examination and the cut off date for such applications was 15-6-2004. As the petitioner had failed to produce the proof of her passing the requisite examination with the application for main examination, therefore, she could not have been issued admission card. It was very essential for the Commission to fix a cut off date for accepting the applications from the candidates for ascertaining the actual number of candidates appearing in examination for conduction of exam in an organized manner. The petitioner had brought proof of her passing the requisite examination one month after the expiry of the last date; therefore, it was rightly refused to accept her request. It has been prayed that by the cut off date the petitioner was not able to file mark sheet of the qualifying examination, therefore, the petition be dismissed.

(6) I have heard learned counsel for the parties.

(7) Counsel for the petitioner argued that as per the eligibility criteria the candidates who had appeared or intending to appear in the qualifying examination were entitled to appear in the Preliminary Examination, accordingly the petitioner appeared in the Preliminary Examination and was successful in the said Examination. At the same time, the petitioner had also appeared in the qualifying examination, but the result could not be declared in time i.e. before the cut off date for submitting the application for main examination on account of certain difficulties with the University due to Parliament Elections and for that purpose the petitioner was not responsible. There was no fault on the part of the petitioner. He further argued that before commencement of the examination i.e. 26-7-2004, result of the qualifying examination was declared on 13th July 2004. The petitioner approached the Commission on 16th July 2004 for acceptance of her mark sheet and issuance of admission card. He further submitted that the petitioner is a meritorious candidate and if the prayer is not allowed, then she will be put to unnecessary hardship and irreparable loss for no fault on her part. Moreover, there was no mandatory condition fixed that in case the candidates will not be able to furnish their mark sheets of the qualifying examination, then their application forms for main examination will not be accepted on any term and

will be rejected outrightly. He further argued that even without mark sheet of qualifying examination respondent accepted the application of the petitioner for main examination. There was no mandatory condition in the said advertisement that after filing of the application, any other document in support of the application will not be accepted after cut off date. Relying on the decision of the Hon'ble Apex Court in the matter of **Ashok Kumar Sharma and another V. Chander Shekher and another** reported in **1993 Supp (2) Supreme Court Cases 611**, counsel for the petitioner submitted that the case of the petitioner is squarely covered by the said decision and the petition deserves to be allowed.

(8) On the other hand, counsel for respondent argued that as per the eligibility criteria the petitioner was required to submit the proof of passing of the qualifying examination along with the application for main examination. The cut off date for filing the application for main examination was 15-6-2004, therefore, after passing of one month's time, mark sheet of the qualifying examination could not have been accepted. Therefore, action of respondent was correct. In support of his arguments he relied upon a decision of the Hon'ble Apex Court in the matter of **State of Rajasthan V. Hitendra Kumar Bhatt** reported in **AIR 1998 SUPREME COURT 91.**

(9) In order to appreciate the arguments advanced by learned counsel for the parties, it will be profitable to reproduce the relevant provision regarding eligibility criteria.

> **Eligibility conditions**: (b). **Minimum educational qualification-** A candidate must hold a degree of any of the Universities incorporated by an Act of the Central or State Legislature in India or other Educational Institution established by an Act of Parliament or declared to be deemed as a University under Section 3 of the University Grants Commission' Act, 1956 or possess an equivalent qualification.
>
> **Note-I** Candidates who have appeared at an examination the passing of which would render them educationally qualified for the commission's examination but have not been informed of the results as also the candidates who intend to appear at such a qualifying examination will also be eligible for admission to the Preliminary Examination. All

> candidates who are declared qualified by the Commission for taking the State Services (Main) Examination will be required to produce proof of passing the requisite examination with their application for the Main Examination.

Note-I of the above rule envisages that even those candidates who had appeared at an examination the passing of which would render them educationally qualified for the Commission's examination but had not been informed of the results as also the candidates who intending to appear at such a qualifying examination were eligible for admission to the Preliminary Examination.

(10) This rule further envisaged that all the candidates who were declared qualified by the Commission for taking up the main examination were required to produce proof of passing the requisite examination with their application for the Main Examination. In this provision no mandatory requirement was incorporated i.e. nothing was mentioned in this eligibility criteria that in no circumstances the application for the main examination will be entertained without filing the proof of passing the requisite examination. Moreover, consequences of not filing the proof with application are not mentioned in this rule. The only condition was that the candidate will be required to produce the proof, but the application of the petitioner was accepted without such proof. The result could not be declared on account of certain difficulties faced by the University and there was no fault on the part of the petitioner, even the Commission accepted the application of the petitioner for main examination without proof of passing of the requisite examination. As soon as the result was declared that too before the commencement of the main examination, the petitioner approached the Commission for acceptance of the proof i.e. mark sheet regarding passing of the requisite examination. In this connection, the judgment of Hon'ble Apex Court in the matter of **Ashok Kumar Sharma (Supra)** is relevant in which it is held that:

> "The appellants were fully qualified for being selected prior to the date of interview. By allowing the appellants to appear in interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in public interest that the interview was made as broad based as was possible on the basis of qualification. It was in public interest that better candidates who were fully qualified on the

> dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of interview. "

in this case also the petitioner's case is on the better footing for the reason that in view of the eligibility criteria the candidates were required to file the proof of passing of the requisite examination with the application for main examination. The petitioner even though could not produce the proof along with the application, but, in-fact, before starting of the examination i.e. 26-7-2004 the petitioner approached the Commission on 16-7-2004 with proof of passing of the requisite examination, but her request was turned down. The spirit behind the above clause was that the candidate ought to have passed the examination before appearing in the main examination. In this rule no mandatory requirement was fixed that application will not be accepted without filing the proof of passing of requisite examination, neither it was mentioned that the application will not be accepted on any terms without such proof and even the candidates will not be allowed to file the proof after submitting the application. In this case, the Commission accepted the application of the petitioner which was submitted within the stipulated time and later on, when the result was declared, the petitioner passed in the qualifying examination, she approached the Commission with the proof of passing of the requisite examination that too before commencement of the examination, therefore, I am of the considered opinion that, looking to the facts and circumstances of the present case, the requirement of the eligibility criteria was met with by the petitioner.

(11) Now, coming to the case law cited by the counsel for respondent, the above decision of the Hon'ble Apex Court is distinguishable on facts. In this case, in the last paragraph of the advertisement clause it was specifically mentioned that "no certificate or mark sheet will be accepted after the receipt of the application form in the office", but in the petitioner's case no such condition was prescribed in the eligibility criteria. Looking to the facts of the present case, it is in public interest that the meritorious candidates like the petitioner should not be deprived from appearing in the main examination on technical grounds. Moreover, when the petitioner was able to furnish the proof of passing of the requisite examination much before commencement of the examination, the situation was not within the control of the petitioner, as per the eligibility criteria, the petitioner was eligible to appear in the Preliminary Examination of the Civil Services Examination, as she was intending to appear in the qualifying

examination. She had appeared in the said examination, but unfortunately on account of certain difficulties faced by the University result could not be declared in time, which was not within the control of the petitioner, therefore, for that the petitioner cannot be punished for no fault on her part. Since beginning the intention of the rule was to entertain the application from the candidates awaiting result, therefore, in the given situation, when the result was declared before commencement of the examination, in all fairness and reasonableness respondent ought to have accepted the proof filed by the petitioner. Therefore, the petition of the petitioner deserves to be allowed.

(12) In the result, the petition of the petitioner is allowed. The interim order dated 23-7-2004 whereby the petitioner was allowed to appear in the examination is modified. The respondent is directed to declare the result of the petitioner.

(13) Parties to bear their own cost.

**Sd/-**
**L.C. Bhadoo**
**Judge**

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